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IN THE HIGH COURT OF JUDICATURE AT BILASPUR C.G.

CRIMINAL APPEAL NO. 730 /2005 **Division Bench**

3370/05
13/9/05
B.L. Sahu
..... Advocate

APPELLANT:
In Jail
13.03.2001

SHRAVAN KEWAT S/o Baba Kewat @ Ramprasad Kewat, Age –18 Years, R/o Village Kathakoni, P.S. Takhatpur, Tahsil Takhatpur, Distt. Bilaspur (C.G.)

-VERSUS-

13/9/05 R. to D.R. (J)

RESPONDENT

State of Chhattisgarh Through Police Station: -Civil-line, Distt. Bilaspur (C.G.)

APPEAL U/S 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

Conviction Sentence

(26)

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH : BILASPUR

DIVISION BENCH : **HON'BLE SHRI L.C.BHADOO &**
HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 730 OF 2005

Appellant : **Shravan Kewat**

Vs.

Respondent : **State of Chhattisgarh**

Shri Ajay Ayachi, learned counsel for the appellant.
Shri U.N.S. Chandel, learned P.L. for the State/respondent.

ORAL JUDGMENT
(12/09/2006)

Per L.C. Bhadoo, J

While arguing the bail application M.Cr.P.No. 1487/2006, learned counsel for the accused/appellant submitted that the allegation against the accused is that he assaulted the deceased with fists and he is in detention since 13.3.2001, which has not been disputed by learned counsel for the State. Learned counsel for the accused/appellant prayed that the appeal

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 2 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

itself should be finally disposed of being a small matter, to which learned counsel for the State also does not have any objection; therefore, the final arguments were heard.

2. The appeal is directed against the impugned judgment of conviction and order of sentence dated 25th January 2002 passed by Fifth Additional Sessions Judge, Bilaspur (C.G.) in S.T.No. 170/01 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life and pay a find of Rs. 1,000/-, in default of payment of fine to further undergo R.I. for one month.

3. Case of the prosecution in brief is that deceased Ramphal was the real uncle of the accused/appellant. On the death of father of the accused namely Ram Prasad, the deceased kept the wife of Ram Prasad namely Droupadibai in his house as his wife. There were three sons of Droupadibai and one of them is the accused/appellant Shravan Kewat. On the fateful day i.e. 01st March 2001 deceased Ramphal was sitting near Matachoura temple, the accused all of a sudden came from behind and after saying that he has been ousted from the house, started

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

assaulting him with kicks and fists, as a result of which Ramphal became unconscious and he was taken to the hospital. On the request of police the Executive Magistrate Shri S.S. Dubey (PW-3) recorded the dying declaration (Ex.P-3) of Ramphal. During his treatment Ramphal died on 3.3.2001 in the hospital. The incident was witnessed by Prem Kumar (PW-2), Kalu Yadav (PW-13), Bajran Kumar Kewat (PW-14) and Nanhu and they intervened. Dehati Nalishi (Ex.P-17) was lodged by deceased Ramphal in the Police Station – Civil Line, Bilaspur. Merg intimation (Ex.P-8) was given by Dr. N.S.Chandel (PW-9) to the police station. Based on that the First Information Report (Ex.P-18) was registered. After registration of the crime the investigating officer took up the investigation and after giving notice (Ex.P-1) to the Panchas, he prepared the Panchanama (Ex.P-2) of the dead body of Ramphal. Postmortem on the body of Ramphal was conducted in Dharam Hospital, Bilaspur by Dr. C.M. Tiwari (PW-8) who prepared the postmortem report (Ex.P-6) in which he opined that cause of death is shock secondary to internal hemorrhage due to spleenic rupture and small intestinal perforation. After completion of usual investigation the charge sheet was filed in the Court of Chief Judicial Magistrate, Bilaspur who in turn committed the case to the Sessions

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Judge, Bilaspur from where learned Additional Sessions Judge, Bilaspur received the case on transfer for trial.

4. Prosecution in order to establish the charge against the accused/appellant examined 16 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime in question.

5. Learned Additional Sessions Judge after hearing Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

6. Learned counsel for the accused/appellant has not disputed the homicidal death of deceased Ramphal. Apart from that, from perusal of dying declaration (Ex.P-3), postmortem report (Ex.P-6) and the evidence of Dr. C.M. Tiwari (PW-8) as well as the ocular evidence of Vimal Patel (PW-1) and Prem Kumar (PW-2), the homicidal death of deceased Ramphal is established.

7. As far as involvement of the accused/appellant in crime in question is concerned, Shri S.S. Dubey (PW-3), Nayab Tehsildar has stated that on

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

02nd March 2001 he was posted as Nayab Tehsildar in Bilaspur and on the request of Police Station – Civil Line, Bilaspur he recorded the dying declaration of Ramphal which is Ex.P-3 in which the deceased has stated that Shravan assaulted him with fists. Perusal of dying declaration (Ex.P-3) reveals that deceased Ramphal himself stated that his nephew Shravan has assaulted him and as to why he assaulted him, he did not know. Vimal Patel (PW-1) has stated that the accused attacked the deceased with fists. Similar is the evidence of Prem Kumar (PW-2). Therefore, on the basis of evidence of Vimal Patel (PW-1), Prem Kumar (PW-2) and dying declaration of Ex.P-3, it is established that the accused/appellant was the author of the injuries inflicted on the body of deceased Ramphal, as a result of which he succumbed to the injuries on account of rupture of spleen and perforation of the intestines. To this extent we do not find any illegality or infirmity in the judgment of the trial Court.

8. Learned counsel for the accused/appellant submitted that the accused had no intention to cause death of Ramphal who was his real uncle and on account of some family dispute on a trivial matter, the accused all of a sudden without any preparation or premeditation in a heat of passion, assaulted the deceased with fists on his stomach as a result of which spleen was ruptured which proved fatal to the deceased.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, at the most the offence against the present appellant does not travel beyond Section 304-II of the Indian Penal Code.

9. Learned counsel for the State/respondent supported the impugned judgment of the trial Court.

10. In order to appreciate the arguments advanced by learned counsel for the appellant we have perused the record. It is admitted position that deceased was the real uncle of the accused and the accused all of a sudden when the deceased was sitting near the temple, started assaulting him with fists and no weapon was used by the accused and the assault made by fist landed on the stomach, as a result of which spleen was ruptured. Therefore, from the above evidence it cannot be inferred that the accused assaulted the deceased with an intention to cause his death. However, it can safely be inferred from the manner in which the accused attacked the deceased on stomach with fists as a result of which spleen was ruptured and there was perforation in the intestine that the accused had knowledge that assaulting the deceased in such a manner may likely to cause his death, therefore, in our considered opinion the offence against the accused/appellant does not travel beyond Section 304-II of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

IPC and the conviction and sentence under Section 302 of the IPC cannot be sustained.

11. In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the IPC are set aside. Instead thereof, the accused/appellant is convicted under Section 304-II of the IPC and sentenced to undergo R.I. for 6 years. As the accused/appellant is in custody since 13.3.2001, he will be entitled for set off of the above period against the jail sentence imposed upon him.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge